



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Elizabeth Beacham White, Esquire  
Clark Hill PLC  
601 Pennsylvania Avenue NW  
North Building, Suite 1000  
Washington, DC 20004

NOV 23 2016

Re: MUR 7018  
Reform Washington, *et al.*

Dear Ms. White:

On March 3, 2016, the Federal Election Commission notified your clients, Reform Washington and Nancy H. Watkins in her official capacity as treasurer of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On November 15, 2016, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Rick Wilson, Reform Washington and Nancy H. Watkins in her official capacity as treasurer violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy, Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Shonkwiler  
Assistant General Counsel

Enclosure

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Reform Washington and MUR: 7018  
Nancy H. Watkins in her  
official capacity as treasurer  
Rick Wilson  
Carlos Lopez-Cantera for Senate and  
Paul Kilgore in his official capacity as treasurer

**I. INTRODUCTION**

The Complaint alleges that an independent-expenditure-only political committee, Reform Washington and Nancy H. Watkins in her official capacity as treasurer ("Reform Washington"), made a prohibited in-kind contribution to Carlos Lopez-Cantera for Senate and Paul Kilgore in his official capacity as treasurer ("the Committee") by coordinating its expenditures with the Committee through a common vendor or former employee/independent contractor named Rick Wilson. Respondents deny the allegations.

As discussed below, the available information does not establish that Reform Washington paid for any communications that implicate the Commission's coordinated communications regulations. Accordingly, the Commission finds no reason to believe Respondents violated the Act.

**II. FACTS**

At the time of the Complaint, Carlos Lopez-Cantera ("Lopez-Cantera") was a 2016 candidate for the U.S. Senate in Florida.<sup>1</sup> Lopez-Cantera declared his candidacy on July 15,

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<sup>1</sup> <http://www.miamiherald.com/news/politics-government/election/article27290605.html>.

1 2015, and on July 22, 2015, he filed both his Statement of Candidacy and a Statement of  
2 Organization designating Carlos Lopez-Cantera for Senate as his principal campaign committee.<sup>2</sup>

3 Rick Wilson was an independent contractor and consultant to the Committee from mid-  
4 2015 to December 1, 2015, and was paid through his consulting firm, Intrepid Media, Inc., a  
5 Florida corporation.<sup>3</sup> The Committee made two disbursements to Intrepid Media—on  
6 August 11, 2015, and September 2, 2015, for “Marketing Consulting.”<sup>4</sup> Respondents assert that  
7 the Committee and Wilson ended their relationship on December 1, 2015.<sup>5</sup>

8 Reform Washington is an independent-expenditure-only committee that registered with  
9 the Commission on April 8, 2015.<sup>6</sup> Reportedly, Reform Washington was formed to support  
10 Lopez-Cantera.<sup>7</sup> Reform Washington disclosed year-end total receipts of \$923,642 for 2015 and  
11 disclosed a disbursement of \$7,500 to Intrepid Media for “Media Consulting” on December 18,  
12 2015.<sup>8</sup> On January 18, 2016, news media reported that Rick Wilson was leaving the Committee  
13 to work at Reform Washington as an advisor for its independent efforts to support Lopez-  
14 Cantera.<sup>9</sup>

<sup>2</sup> Statement of Candidacy, Carlos Lopez-Cantera (July 22, 2015); Statement of Organization, Carlos Lopez-Cantera for Senate (July 22, 2015). Lopez-Cantera withdrew his candidacy on June 22, 2016. <http://www.floridapolitics.com/archives/214285-carlos-lopez-cantera-officially-drops-florida-senate-race>.

<sup>3</sup> Reform Washington Resp. at 2 (Apr. 29, 2016) (joint response of Reform Washington and Rick Wilson).

<sup>4</sup> 2015 October Quarterly Report, Carlos Lopez-Cantera for Senate (Oct. 15, 2015).

<sup>5</sup> Committee Resp. at 2 (Apr. 29, 2016); Reform Washington Resp. at 2.

<sup>6</sup> Statement of Organization, Reform Washington (Apr. 8, 2015).

<sup>7</sup> Andrea Drusch, *Republican Candidate Adopts Jeb Bush Super-PAC Strategy for the Senate*, The National Journal (May 19, 2015), available at: <http://www.theatlantic.com/politics/archive/2015/05/republican-candidate-adopts-jeb-bush-super-pac-strategy-for-the-senate/435291/>.

<sup>8</sup> 2015 Year End Report, Reform Washington (Jan. 31, 2016).

<sup>9</sup> See Mitch Perry, *Rick Wilson Transitions to Carlos Lopez-Cantera's Super PAC*, Florida Politics (January 18, 2016), available at: <http://www.floridapolitics.com/archives/198899-198899>.

1 Based on Wilson's and Intrepid Media's connections to both the Committee and Reform  
2 Washington, the Complaint alleges that Reform Washington was coordinating (or was about to  
3 coordinate) its activities with the Committee. The Complaint alleges that the payment and  
4 content prongs of the coordinated communications test are satisfied because Reform Washington  
5 raised \$923,642 to make independent expenditures, hired Wilson, and "paid Intrepid Media  
6 \$7,500 for consulting services at a time when Wilson was employed as a consultant by the  
7 Lopez-Cantera campaign."<sup>10</sup> Without explaining the basis for its contention, the Complaint  
8 claimed that Reform Washington's \$7,500 payment to Intrepid Media for "Media Consulting" in  
9 December 2015 shows that Intrepid Media or Wilson was performing the same or similar  
10 services for Reform Washington as it did for the Committee. Compl. at 5. The Complaint,  
11 however, did not identify any specific Reform Washington communication that it alleged was  
12 coordinated.

13 Respondents assert that the allegations are frivolous, unsupported, and should be  
14 dismissed.<sup>11</sup> Respondents state that Intrepid Media was never a common vendor of the  
15 Committee and Reform Washington because the Committee severed ties with Wilson and  
16 Intrepid Media on December 1, 2015, and Intrepid Media only began providing consulting  
17 services to Reform Washington after Wilson left the Committee.<sup>12</sup> Respondents also assert that

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<sup>10</sup> Compl. at 4 (Feb. 26, 2016). The receipt and disbursement amounts appear in Reform Washington's 2015 Year-End Report, the most recent disclosure report at the time of the Complaint. Reform Washington has since made several additional monthly disbursements in the amount of \$7,500 to Intrepid Media for "Media Consulting" on January 14, February 4, March 1, April 4, May 2, and June 2, 2016. 2016 April Quarterly Report, Reform Washington (Apr. 15, 2016); 2016 July Quarterly Report, Reform Washington (July 14, 2016).

<sup>11</sup> Committee Resp. at 1; Reform Washington Resp. at 1.

<sup>12</sup> Committee Resp. at 2; Reform Washington Resp. at 2.

1 Reform Washington had not paid for or produced any public communication that expressly  
2 advocated for or against any candidate as of April 29, 2016, the date of their responses.<sup>13</sup>

3 **III. LEGAL ANALYSIS**

4 The Act prohibits any person from making, and any candidate or committee from  
5 accepting or receiving excessive or prohibited contributions.<sup>14</sup> In addition, independent  
6 expenditure-only political committees are prohibited from making contributions to federal  
7 candidates.<sup>15</sup> The term "contribution" includes anything of value given for the purpose of  
8 influencing a federal election.<sup>16</sup> Further, any expenditure made by a person "in cooperation,  
9 consultation, or concert, with, or at the request or suggestion of, a candidate, authorized political  
10 committee, or a national or state party committee" is considered an in-kind contribution.<sup>17</sup> These  
11 expenditures are deemed "coordinated."<sup>18</sup>

12 A communication is coordinated with a candidate, his authorized committee, or agent of  
13 either, if it meets a three-prong test set forth in the Commission's regulations: (1) it is paid for, in

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<sup>13</sup> *Id.* The Committee asserts that since Wilson and Intrepid Media ceased providing services to the Committee on December 1, 2015, their 120-day "cooling off" periods under the Commission's coordinated communication regulations ended on March 29, 2016, and that even if it had sponsored a communication, any such expenditures that Reform Washington made to support Lopez-Cantera after that date would not be deemed coordinated under a common vendor or former independent contractor legal theory. Committee Resp. at 3. Respondents further assert that when Wilson was hired, he signed Reform Washington's written firewall policy agreement, which prohibits any coordination between Reform Washington's employees or consultants and Committee employees, and they provided a copy of Wilson's signed, but undated agreement. Reform Washington Resp. at 2, 3, Attach. 1. Reform Washington and Wilson further assert that the Complaint has not shown that Wilson violated the firewall agreement or that Intrepid Media used or conveyed to Reform Washington material information about the Committee's plans, projects, activities, or needs. Reform Washington Resp. at 3.

<sup>14</sup> 52 U.S.C. § 30116(a), (f). *See, e.g.* 52 U.S.C. § 30118(a)(illegal to make or knowingly receive corporate or union contributions).

<sup>15</sup> Advisory Op. 2010-11 (Commonsense Ten).

<sup>16</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>17</sup> *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

<sup>18</sup> 11 C.F.R. § 109.20.

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1 whole or in part, by a person other than the candidate or authorized committee; (2) it satisfies one  
2 of five content standards in 11 C.F.R. § 109.21(c);<sup>19</sup> and (3) it satisfies one of six conduct  
3 standards in 11 C.F.R. § 109.21(d).<sup>20</sup> All three prongs must be satisfied for a communication to  
4 be considered coordinated under these regulations.<sup>22</sup>

5 The available information fails to show that the coordinated communications regulation  
6 is implicated. The Complaint infers that the payment and content prongs were met, or were  
7 about to be met, because Reform Washington had raised almost \$1 million for independent  
8 expenditures to support federal candidates, and Lopez-Cantera was the candidate it indicated it  
9 would be supporting. However, there is no information that Reform Washington ever paid for  
10 any public communications or electioneering communications supporting Lopez-Cantera.<sup>23</sup>

11 Accordingly, the Commission finds no reason to believe Reform Washington and Nancy  
12 H. Watkins in her official capacity as treasurer, Rick Wilson, and Carlos Lopez-Cantera, and  
13 Carlos Lopez-Cantera for Senate and Paul Kilgore in his official capacity as treasurer violated  
14 the Act.

<sup>19</sup> In general, the content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified candidate, and is publicly distributed or disseminated in a jurisdiction 90 days or fewer before the candidate's primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5).

<sup>20</sup> The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. *Id.* § 109.21(d)(1)-(6).

<sup>22</sup> 11 C.F.R. § 109.21(a).

<sup>23</sup> Reform Washington's disclosure reports show no disbursements for independent expenditures, and the Commission's database does not show that Reform Washington filed any independent expenditures or electioneering communications reports. *See, e.g.*, 2016 July Quarterly Report, Reform Washington (July 14, 2016); [http://www.fec.gov/finance/disclosure/ec\\_table.shtml](http://www.fec.gov/finance/disclosure/ec_table.shtml).